

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

v.

DAVID MIDDENDORF, et al.,

Defendants.

Case No. 18 Cr. 36 (JPO)

DECLARATION OF MELINDA HAAG

Melinda Haag, an attorney duly admitted *pro hac vice* to practice in the U.S. District Court for the Southern District of New York, hereby declares pursuant to 28 U.S.C. § 1746 and under penalty of perjury:

1. I am a partner with the law firm of Orrick, Herrington & Sutcliffe LLP and counsel for Defendant David Britt in this case. I am competent in all respects to make this declaration.
2. I submit this declaration in support of Mr. Britt's Motion to Compel Rule 16, *Brady*, and Other Discovery. Unless otherwise indicated, I have personal knowledge of the facts stated herein, and each of them is true and correct.
3. On May 4, 2018, I sent a letter requesting outstanding discovery to counsel for the Government Amanda Kramer, Rebecca Mermelstein, and Jessica Greenwood. A copy of that letter is attached hereto as **Exhibit 1**.
4. On June 1, 2018, I received a response to our May 4, 2018 letter from the Government. A copy of that response is attached hereto as **Exhibit 2**.
5. On June 4, 2018, I sent a second letter to counsel for the Government requesting additional categories of discoverable information in light of the Government's representations at

oral argument on the Defendants' motions to dismiss. A copy of that letter, which requested a response by June 6, 2018 in light of the June 8, 2018 motion deadline, is attached hereto as

Exhibit 3.

6. As of the time of this writing, I have not received a response to the June 4, 2018 letter.

7. Despite conferring with counsel for the Government through these written exchanges in a good faith effort to resolve outstanding discovery issues without the intervention of the Court, we have been, in large part, unable to reach agreement as to Mr. Britt's discovery requests. The areas regarding which we were unable to reach agreement are detailed in the accompanying memorandum of law.

8. I am informed and believe that **Exhibit 4**, attached hereto, is a true and correct copy of a transcript of Brian Sweet's plea colloquy dated January 5, 2018.

9. Attached hereto as **Exhibit 5** is a copy of the Agent Affidavit in Support of Application for Search Warrants for Stored Electronic Communications sworn by Postal Inspector Lyeson Daniel before the Hon. Henry B. Pitman and dated July 21, 2017, produced by the Government with Bates stamps SDNY-00000001 through SDNY-00000024.

10. Attached hereto as **Exhibit 6** is a copy of a letter dated June 28, 2017 that my partner Robert M. Stern and I drafted and sent to Amanda Kramer and Rebecca Mermelstein via email on June 28, 2017.

11. Attached hereto as **Exhibit 7** is an SEC press release dated January 22, 2018 announcing the initiation of SEC enforcement proceedings against Mr. Britt and the other defendants. This document is available on the SEC's website at <https://www.sec.gov/news/press-release/2018-6>.

12. Attached hereto as **Exhibit 8** is a copy of the Order Instituting Public Administrative and Cease-and-Desist Proceedings filed against Mr. Britt and the other defendants before the Securities and Exchange Commission and dated January 22, 2018. This document is available on the SEC's website at <https://www.sec.gov/litigation/admin/2018/34-82556.pdf>.

13. I am informed and believe that the Government produced to us in discovery some content from Mr. Britt's cellphone on February 7, 2018. The Government represented during the March 15, 2018 status conference that the production of content from the Defendants' cellphones was incomplete due to technical difficulties. The Government sent a discovery transmittal letter dated May 9, 2018, which we received on May 14, 2018. The Government represented that the production included additional data from Mr. Britt's cellphone, but I am informed and believe that to date technical issues have prevented us from being able to upload the production to a secure review platform in a way that ensures the integrity of the data is preserved. The Government has not responded to a separate request to confirm that the May 14, 2018 production contains all of the remaining information from Mr. Britt's cellphone. I am informed and believe that the Government has represented that the technical issues have been cured by a new production received today.

14. I am informed and believe that counsel for Cynthia Holder sent a discovery letter to counsel for the Government requesting, in sum and substance, information in support of the Government's allegations regarding the resources and costs associated with the creation and re-creation of the PCAOB inspection lists and the value of said information in the hands of KPMG.

15. I declare under penalty of perjury that the foregoing is true and correct.

Dated: June 8, 2018
San Francisco, California

/s/ Melinda Haag
MELINDA HAAG